Deery v. *Hamilton*, 41 Ia. 16. In accordance, however, with the rule that there is no such obligation to repay money paid under a mistake of law, one lending money because of a mistaken notion as to an executor's authority to borrow, cannot recover. *Merchants' Nat'l Bank* v. *Weeks*, *supra*.

QUASI-CONTRACTS — RIGHTS ARISING FROM MISTAKE OF FACT — PAYMENT IN ANTICIPATION OF A NON-EXISTING LEGAL LIABILITY. — K. & Co. in New York notified the plaintiff in London that they had credited a certain amount to a third party, and requested him to recoup them, according to their prior agreement. Before making any payments to the third party K. & Co. became insolvent. After the insolvency, the plaintiff, in anticipation of his legal liability, deposited the requested amount to K. & Co.'s account with the defendants in London. Later that day he learned of the insolvency and notified the defendants. They had merely made an entry of the credit to the account of K. & Co. K. & Co. were largely indebted to the defendants, who refused to refund to the plaintiff. *Held*, that as the plaintiff paid the money under a mistake of fact, he can recover. *Kerrison* v. *Glyn, Mills, Currie & Co.*, 26 T. L. R. 37 (Eng., K. B. D., Oct. 28, 1909).

Where money has been paid under a mistake of fact, an action for money had and received will lie. *McLean County Bank* v. *Mitchell*, 88 Ill. 52. And the payee is liable to refund, even though in ignorance of the mistake he has paid the money to another. *Continental Caoutchouc, etc., Co.* v. *Kleinwort Sons & Co.*, 20 T. L. R. 403. Though the ground for recovery is usually alleged to be in quasi-contract, the underlying principle of the relief given is equitable. In fact the case is analogous to those where money is received for a particular purpose which fails. See *Cutler* v. *Am. Exchange Nat. Bank*, 113 N. Y. 593. There the depositary becomes liable as a constructive trustee. *Stumore* v. *Campbell & Co.*, [1892] 1 Q. B. 314. And yet an action on the common counts lies. *Ashpitel* v. *Sercombe*, 19 L. J. Exch. 82. The mistake must be as to a material fact. *Chambers* v. *Miller*, 13 C. B. N. S. 125. And when the plaintiff paid, he must not have doubted his liability. *McArthur* v. *Luce*, 43 Mich. 435. His claim rests on the fact that the defendant is being unjustly enriched at his expense. To prove that the enrichment is at his expense, the plaintiff must show a failure of consideration. *Taylor* v. *Hare*, 1 B. & P. N. R. 260. And to prove that it is unjust, the plaintiff must show that he was neither legally nor morally bound to pay. *Franklin Bank* v. *Raymond*, 3 Wend. (N. Y.) 69. It is submitted that the above theories are properly applicable to the principal case, which is thoroughly in accord with public policy.

LANDLORD AND TENANT — RENT — STATE INTERFERENCE WITH BENEFICIAL USE OF PREMISES. — Premises were leased for occupation "as a saloon and not otherwise." During the term the sale of intoxicating liquor was prohibited by law. The lessee continued to occupy the premises. The lessor sued for rent which accrued after the prohibitory law had gone into effect. *Held*, that he can recover. *O'Byrne* v. *Henley*, 50 So. 83 (Ala.).

No rent need be paid after a natural catastrophe has totally destroyed the leased premises. *Graves* v. *Berdan*, 26 N. Y. 498. *Contra*, *Izon* v. *Gorton*, 5 Bing. N. Cas. 501. The same is true if the state, by eminent domain, takes title to the whole of the premises. *Corrigan* v. *City of Chicago*, 144 Ill. 537. After either of these events, the estate demised, out of which the rent is to issue, no longer exists. But by the weight of authority physical damage short of total destruction does not alter the lessee's liability for rent. *Hilliard* v. *The New York & Cleveland Gas Coal Co.*, 41 Oh. St. 662. By the minority view, the rent under such circumstances is apportioned, on the theory that the diminution of the beneficial use of the premises causes a failure of consideration for the rent. See *Wattles* v. *South Omaha Ice & Coal Co.*, 50 Neb. 251. But since a lease is not a contract of continuing performance, but the grant of an estate for years, there

is properly no failure of consideration as long as the estate continues. *Hill* v. *Woodman*, 14 Mo. 38. Since the lessee's estate is unimpaired, the principal case is clearly right. *Miller* v. *Maguire*, 18 R. I. 770. *Cf. Parks* v. *Boston*, 15 Pick. (Mass.) 198. The prevention of unjust resuits from this doctrine should be left to legislation. *Cf. Suydam* v. *Jackson*, 54 N. Y. 450.

LARCENY — PROPERTY SUBJECT TO LARCENY — UNINDORSED CHECKS. — A statute made checks subject to larceny. The defendant was indicted for larceny of an unindorsed check payable to a third party. *Held*, that in determining the value of the stolen property, the face value of the check is to be taken. *State* v. *McClellan*, 73 Atl. 993 (Vt.).

At common law a check could not be stolen, as it was merely evidence of a chose in action. *Culp* v. *State*, 1 Port. (Ala.) 33. But this rule has been almost universally changed by statutes applying to all commercial paper. The Vermont statute simply says that one who steals the check of another is guilty of larceny. VT. P. S. 5755. The guilt of the defendant seems to depend more on the fact that the check is of value to the owner than that the thief would be benefited by it. Thus one who steals an invalid note is not guilty of larceny. *Wilson* v. *State*, 1 Port. (Ala.) 118. And the same rule applies to the theft of a non-negotiable note given in pursuance of an invalid contract. *People* v. *Hall*, 74 Hun (N. Y.) 96. But if the instrument would be valid in the hands of some one, it does not seem necessary that the defendant should find it of value. *Phelps* v. *People*, 72 N. Y. 334. By the statute, the check becomes a thing of value in itself. So in the principal case the defendant, by taking the check, deprived the payee of something of value and was therefore rightly convicted.

LEGACIES AND DEVISES — TITLE AND RIGHTS OF DEVISEES AND LEGATEES — DIVIDENDS ON SPECIFIC LEGACY ERRONEOUSLY TRANSFERRED. — A testator made a will bequeathing certain specific shares of stock to the defendants. After probate of the will the shares were transferred by the executors, and the defendants received several dividends thereon. A codicil was later discovered, bequeathing a portion of these shares to the plaintiff. The original probate was revoked, and a fresh probate of the will and codicil granted. The plaintiff now seeks to recover not only his portion of the shares but all dividends received thereon since the testator's death. *Held*, that the plaintiff can recover both shares and dividends. *West* v. *Roberts*, [1909] 2 Ch. 180. See NOTES, p. 215.

LIBEL AND SLANDER — PLEADING AND PROOF — LIBEL WITHOUT INTENT. — A newspaper published an imaginary account of a supposedly fictitious character. The name used was that of the plaintiff, a prominent barrister of the locality, whose friends reasonably believed that he was the person referred to. The defendant did not intend to refer to the plaintiff, and had no intention of libelling any one. The plaintiff brought action for libel. *Held*, that he can recover. *Jones* v. *Hutton & Co.*, L. R. (1909) 2 K. B. 444. See NOTES, p. 218.

PATENTS — INFRINGEMENT — CONTRIBUTING TO VIOLATION OF LICENSE. — The complainant sold patented sealing machines on condition that they be used only with seals made by the complainant, but not protected by patent. The defendant, with knowledge of these facts, sold seals of its own manufacture for use on these machines. *Held*, that the sale can be enjoined. *Crown Cork & Seal Co.* v. *Brooklyn Bottle Stopper Co.*, 172 Fed. 224 (Circ. Ct., E. D., N. Y.).

A patentee may impose restrictions on the use of his product when he sells it. *Victor Talking Machine Co.* v. *The Fair*, 123 Fed. 424; *Bement* v. *National Harrow Co.*, 186 U. S. 70. (A different rule prevails as to copyrights. See 22 HARV. L. REV. 228.) Thus a stipulation that all supplies used with a patented machine shall be purchased from the patentee is valid, though the supplies are unpatented. *Heaton-Peninsular Button-Fastener Co.* v. *Eureka Specialty Co.*, 77